

Criminal Law MBE Flashcards

The situs of the crime is defined by the following two elements: (1) where the proscribed act or omission took place; or (2) the place of the harmful result.

Federal criminal law is governed entirely by statute, this is because there is no federal common law.

Article one of the Constitution places two substantive limitations on both federal and state legislatures, and these limitations are: (1) That there are no ex post facto laws, and (2) That there are no bills of attainder.

Ex Post Facto Laws operate to retroactively: (1) Make criminal an act that when done was not criminal; (2) Aggravate a crime, or increase the punishment thereafter; (3) Change the rules of evidence to the detriment of criminal defendants as a class; or (4) After the law of criminal procedure is in place, deprive the defendant of substantive rights.

A bill of attainder is a legislative act that inflicts punishment, or denies a privilege without a judicial trial.

The Plain meaning rule is that when statutory language is plain and the meaning is clear, the court must give effect to it.

Ambiguous statements are construed in favor of the defendant.

Generally there is no merger except for: (1) Solicitation or Attempt; and (2) Lesser included offenses which merge into greater offenses.

It is not a violation of double jeopardy where a statute provides for multiple, and separate punishments for a single act.

the elements of a crime are: (1) An act (actus reus); (2) An intent (mens rea); (3) A concurrence in time of the two aforementioned elements; (4) Harmful result or causation.

As a physical act must be voluntary, the following acts are not considered voluntary: (1) Conduct not the product of the actor's determination (i.e., shoved into something); (2) Reflexive or convulsive act (i.e., epileptic seizure); or (3) Acts performed while unconscious or asleep, unless the defendant knew of the likelihood of this happening.

Failure to act will result in criminal liability provided three requirements are satisfied: (1) there is a legal duty to act; (2) Knowledge of the facts giving rise to the duty (where the law may impose a duty to learn, such as a lifeguard); and (3) reasonably possible to perform the act not performed.

A legal duty to act can arise from the following sources: (1) Statute (such as to file taxes); (2) Contractual obligation (such as a lifeguard); (3) Certain relationships (such as parent and child relationship).

A voluntary assumption of care doctrine states that once aid is rendered the person rendering the aid may be liable for not satisfying a reasonable standard of care.

There are 10 enumerated specific intent crimes: (1) Solicitation; (2) Attempt; (3) Conspiracy; (4) First degree premeditated murder; (5) Assault; (6) Larceny and Robbery; (7) Burglary; (8) Forgery; (9) False Pretenses; (10) Embezzlement.

There are two malice crimes: (1) Common law murder; and (2) Arson.

The standard of proof for prosecuting malice crimes is that the defendant recklessly disregarded an obvious or high risk that the particular harmful result would occur (note: these crimes are not open to the specific intent defenses).

the doctrine of transferred intent is most commonly applied to three crimes, and do not apply to one type of crime. The crimes that it applies to are: (1) Homicide; (2) Battery; and (3) Arson. The crime that it does not apply to is any attempt crime.

The formula for identifying strict liability crimes is that the crime concerns administrative, regulatory, or morality issues and no adverb is in the statute.

Under enterprise liability, corporations may be held liable under the following conditions: (1) Acts within the scope of the office (look for an agent acting on behalf of a corporation); or (2) Superior Agent rule (agents sufficiently high to presume acts reflect corporate policy).

The Scope of Accomplice Liability is: (1) The crime itself; and (2) All other foreseeable claims.

An Accomplice is defined as, one who, with the intent the crime be committed, aids, counsels, or encourages the principal before or during the commissions of the crime. note that knowledge alone is insufficient.

Accessory after the fact is involved when a crime needing a felony and a completed crime (usually a five year maximum sentence).

Exclusions from liability occur where: (1) they are members of the protected class; (2) and withdrawal before the crime is actually committed.

The methods of withdrawal are: (1) in the case of encouragement--repudiation; (2) in the case of provided materials--neutralize the assistance; or (3) Notify the authorities and take some action to prevent the crime.

The three inchoate offenses are: (1) Solicitation; (2) Attempt; and (3) Conspiracy.

Solicitation is defined as asking someone to commit a felony with the intent that the person solicited do the crime.

The solicitation is complete at the time the solicitation is made.

Impossibility and withdrawal are not defenses to the crime of solicitation; but, exemption from the intended crime, such as a minor female cannot be guilty of soliciting statutory rape, is a possible defense to the crime of solicitation.

Successful conspirators can be convicted of the following: (1) The criminal conspiracy; and (2) The completed crime.

Liability of one of the conspirators for crimes committed by other co conspirators has two requirements which are: (1) the crimes were committed in furtherance of the conspiracy; and (2) They were foreseeable.

The elements of conspiracy are: (1) An agreement between two or more persons which need not be express, as the court will infer the agreement; (2) An intent to enter into an agreement; and (3) An intent to achieve the objective (per the meeting of guilty minds); (4) An overt act (mere preparation will suffice in this case).

There is a split in jurisdictions regarding an overt act to a conspiracy. The Majority view is that there must be an agreement and an overt act. The minority or common law position is that agreement alone is sufficient.

Withdrawal is not a defense to the crime of conspiracy. The crime is completed as soon as the agreement is made and the overt act is taken.

One may limit his or her liability for subsequent acts of other co conspirators if: (1) he or she performs an affirmative act notifying all members; and (2) it must be done in time for them to abandon their plans.

Attempt is defined as the specific intent and a substantial step beyond mere preparation towards completing the crime.

The defense to liability for attempt is legal impossibility. The general rule is that a defendant can never argue abandonment to attempt to escape liability. However, under the Model Penal Code withdrawal will be a defense if: (1) the withdrawal is fully voluntary; and (2) it is complete abandonment.

The formulations of the insanity defenses are as follows: (1) M'Naghten rule; (2) Irresistible Impulse Test; (3) Durham Test; (4) All insanity/Model Penal Code Test.

Under the M'Naghten Rule, a defendant is entitled to an acquittal if he lacked the ability at the time of acting to know the wrongfulness of his act, and was unable to understand the nature and quality of his actions.

under the Durham Test the crime was a product of a mental disease or defect. Think of this as the "But for the disease" test.

Under the All intent or Model Penal Code approach to insanity. The defendant must have suffered from a mental disease and as a result lacked the capacity to appreciate the criminality of his conduct; or to conform his conduct. Note that this is a combination of M'Naghten and the Irresistible impulse tests.

The Burden of proof in insanity cases is that the defendant is typically presumed to be sane, and the defendant must present some evidence of insanity.

A good defense to specific intent crimes is voluntary

intoxication.

However, Voluntary intoxication will not be a defense for: (1) crimes requiring malice; (2) Recklessness or negligence; or (3) Strict liability crimes.

to establish involuntary intoxication there must be: (1) Under duress; (2) Without knowledge; or (3) Pursuant to medical advice.

Infancy is determined by the physical age of the defendant at the time of the crime.

There is no criminal liability based on infancy under the age of 7.

There is a rebuttable presumption of no criminal liability on infancy under the age of 14.

A defendant may use deadly force if: (1) The defendant is without fault; (2) The defendant was confronted with unlawful force; and (3) The defendant was threatened with imminent death or serious bodily injury.

The threat of imminent death or great bodily harm requires: (1) that the defendant must reasonably believe that the threat existed; and (2) That the threat be a present threat.

The minority rule is that one must retreat from deadly force before using self defense. The majority rule however, that there is no such duty.

The aggressor has the right to use self-defense when: (1) he has removed himself from the fight; and (2) has communicated such; or (3) Upon sudden escalation from a minor fight into one of deadly force without a chance to withdraw.

For defense of property deadly force may never be used.

Duress is a defense to all crimes except homicide.

Mistake of fact is a defense to a specific intent crime and any mistake will serve as a defense.

However, mistake of fact as a defense to a malice or general intent crime will only be a defense if the mistake was a reasonable mistake.

Mistake of fact is never a defense to a crime that is a strict liability crime.

Consent as a defense it can never indulge the consent of the victim as a defense.

The crime of entrapment has two elements: (1) Criminal design originated with law enforcement; and (2) The defendant must not have been predisposed to commit the crime. Note that this second element is very narrowly interpreted.

Offenses against the person include the following: (1) Assault and battery; (2) Homicide; (3) Voluntary Manslaughter; (4) Involuntary Manslaughter; (5) Statutory Rape.

Battery is defined as a completed assault. Meaning that there is force to another resulting in either bodily injury or an offensive touching.

The Mens Rea for battery is that there is no intent required, criminal negligence is sufficient.

Aggravated battery is a battery which is committed with: (1) a Deadly weapons; (2) Serious bodily injury; or (3) Victim is a child, woman, or police officer.

There are two possible definitions of assault: (1) An attempt to commit a battery (this is specific intent); or (2) Intentional creation of a reasonable apprehension of an harmful or unwanted touching (this requires more than mere words).

The Common law criminal homicide category is subdivided into three different offenses: (1) Murder; (2) Voluntary Manslaughter; and (3) Involuntary Manslaughter.

Murder is the unlawful killing of a human being with malice aforethought.

Malice is: (1) Intent to kill; (2) Intent to inflict great bodily injury; (3) reckless disregard to an unjustifiably high risk to human life; or (4) Intent to commit a felony.

Voluntary Manslaughter is the intentional killing by proper provocation (that is, passion).

Elements of adequate provocation are: (1) Sudden and intense

heat of passion the same as an ordinary person would be impassioned; (2) The defendant was in fact provoked; (3) There was no time to cool down; (4) The defendant in fact, did not cool down.

Involuntary Manslaughter comes in two forms: (1) Criminal Negligence; and (2) Unlawful Act or Misdemeanor Manslaughter.

Involuntary Manslaughter based on criminal negligence requires that the death be caused by criminal negligence (some states require a subjective awareness of the risk).

Misdemeanor Manslaughter is where the killing is caused by an unlawful act, and in the commission of a misdemeanor which is inherently wrong act or one that is foreseeable.

Felony murder is a killing committed during the course of a dangerous felony, and malice is implied from the intent to commit the underlying felony.

The defenses to felony murder include: (1) A defense to the underlying felony is a defense to felony murder; (2) The felony must be independent of the killing; (3) death must have been foreseeable (broadly interpreted); (4) death must have been caused during the commission of the felony (this includes fleeing); (5) death of a co-felon caused by resistance from the victim or police pursuit.

Applicability of the year and a day rule is outdated and has been mostly abolished.

Hastening of an inevitable result is a legal cause of that result.

The following offenses are the property offenses: (1) larceny; (2) Embezzlement; (3) False pretenses; (4) Robbery.

The two offenses against a habitation are: (1) Burglary; and (2) Arson.

The Elements of larceny where there is possession but not title: (1) a taking (that is the defendant takes control); (2) and a carrying away (known as asportation); (3) of tangible personal

property; (4) of another (someone with a superior possessory interest); (5) by trespass; (6) With the intent to permanently deprive the rightful owner.

Larceny among joint owners or against abandoned property cannot be committed.

Larceny of lost or mislaid property is considered constructively in the owner's possession.

Embezzlement generally requires: (1) the fraudulent; (2) Conversion (manner inconsistent with the trust arrangement; need not benefit the defendant); (3) Of property (real property and services no included); (4) of another; (5) by a person in lawful possession.

False pretenses generally consists of: (1) Obtaining title; (2) to the property of another; (3) by an intentional or knowingly false statement of past or existing fact; (4) with the intent to defraud.

Robbery is Larceny and Assault and consists of: (1) A taking; (2) of personal property of another; (3) From the other's person or presence (this is broadly construed); (4) By force or intimidation (threat of imminent harm); (5) with the intent to permanently deprive. (note a person cannot be charged with both assault and robbery, or battery and robbery). (Also robbery is counted as one robbery per person, not per item).

Aggravated Robbery is Robbery with a deadly weapon.

Extortion distinguished from robbery: (1) it is a future harm rather than imminent harm; (2) and it doesn't have to take anything from the person or his presence.

Common law Burglary is: (1) A breaking; (2) And Entry; (3) Of the dwelling of another; (4) At night; (5) with the intent to commit a felony therein.

The Breaking requirement for burglary is a minimal force is sufficient. It can be constructive which is either through fraud

or threat, and it must be a trespass, plus you must gain entry.

Arson: (1) Malicious; (2) Burning; (3) Of the Dwelling; (4) Of another.